

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1436 of 2019**

[Arising out of Order dated 14<sup>th</sup> October, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in C.P. (IB) No.1775/NCLT/MB/2019]

**IN THE MATTER OF:**

Living Consumer Products Private Limited  
Through its duly Authorized Signatory  
Mr. Jaideep Hotha

A Company incorporated under the  
Companies Act, 2013

Having its registered office at:

3602, Wing A, Rustomjee Elanza,  
Off Link Road,

Near Inorbit Mall, Malad (West),

Mumbai – 400064, State of Maharashtra

....Appellant

Vs

Play Games 24x7 Private Limited  
Through its duly Authorized Signatory

Mr. Prabhu Vijayakumar

A Company incorporated under the  
Companies Act, 1956

Having its registered office at:

401, 4<sup>th</sup> Floor, Building No.16,  
Wing-B, Interface Complex, Off Link Road,  
Malad West, Mumbai – 400064,

State of Maharashtra.

....Respondent

**Present:**

**For Appellant: Mr. Abhijeet Sinha, Mr. Rohit Ghosh, Mr. Saikat Sarkar, Ms. Raveena Rai and Mr. Prateek Kumar, Advocates.**

**For Respondent: Dr. U.K. Choudhary, Sr. Advocate along with Mr. Rajeev Kumar, Mr. Dhruv Gupta, Mr. Arnav Behari and Mr. Mahesh Agarwal, Advocates for Respondent.**

**J U D G M E N T**

**A.I.S. Cheema, J:**

The Appellant – ‘Operational Creditor’ has filed this Appeal against impugned order dated 14<sup>th</sup> October, 2019 in C.P. (IB) No.1775/NCLT/MB/

2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, whereby the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**'IBC'** in short) filed against Respondent, Play Games 24x7 Private Limited – 'Corporate Debtor', came to be rejected on the ground of pre-existing dispute.

2. The Appellant claims that it has supplied digital marketing and advertising services to the 'Corporate Debtor' as per contract dated 09.07.2018 (Annexure 2 – Page 72) and that there were operational dues which are in default to the extent of Rs.6,35,13,977/-. As per the contract, the Appellant was required to generate marketing leads i.e. users for the 'Corporate Debtor's' online gaming portal. The Appellant was required to run various advertising and digital marketing campaigns through Short Message Service (SMS) and other data platform like Facebook, Google etc. The Appellant claims that for the services given by the Appellant, 54 invoices were raised, which were paid by the 'Corporate Debtor', but the present dues, which arose for period dated 1<sup>st</sup> December, 2018 to 15<sup>th</sup> December, 2018 are outstanding for which invoice dated 28<sup>th</sup> December, 2018 (Annexure 8 – Page 155) was raised. The Appellant had issued notice (Annexure 12 – Page 192) under Section 8 of IBC on 5<sup>th</sup> April, 2019 to the 'Corporate Debtor'. The Respondent sent reply dated 15<sup>th</sup> April, 2019 raising disputes that there was unauthorized use of brand keywords by the Appellant and that higher fees had been charged by reporting incorrect geographical locations of the leads.

3. Before the Adjudicating Authority, the Respondent – 'Corporate Debtor' took defense that before the Demand Notice was sent by the Appellant, the 'Corporate Debtor' had served a Legal Notice dated 23<sup>rd</sup> March, 2019 with

regard to the Agreement dated 9<sup>th</sup> July, 2019. The Legal Notice pointed out is at Annexure-10 (page 187). In reply before the Adjudicating Authority, the 'Corporate Debtor' claimed that the Appellant had made unauthorised use of brand name of the 'Corporate Debtor' and had over-charged. Allegations were made regarding the Appellant bribing and colluding with employees of the 'Corporate Debtor'. There was overcharging of fees because of fraudulent passing of users from one State (for which area charges were less) as being users from another State (for which charges were higher). The 'Corporate Debtor' also relied on Investigation Report from Deloitte Touche of March 2019 in support of the defense.

4. The Adjudicating Authority after hearing the parties and considering the records, referred to judgment in the matter of **"Mobilox Innovations Private Limited vs. Kirusa Software Private limited (AIR 2017 SC 4532)"** with regard to definition of "dispute" and found: -

"12. Therefore, on perusal of the documents submitted by the parties, this Bench has observed that the Corporate Debtor has on 23.03.2019, which was before the receipt of demand notice, raised disputes by sending legal notice to the Applicant in relation to Advertising Agreement dated 09.07.2018. The Corporate Debtor vide the said notice also suspended the services and outstanding payments to the Applicant under the Advertising Agreement. Further, the Corporate Debtor also replied to the Demand Notice within the statutory period of 10 days and disputed the unauthorised use of brand keywords and reporting of incorrect geographical locations of leads by the Applicant. The Disputes raised by the Corporate Debtor and collusion of Applicant with employees of Corporate Debtor is also evident from the forensic investigation report annexed by the Corporate Debtor is also evident from the forensic investigation report annexed by the Corporate Debtor. Thus, the contention of the Corporate Debtor that Applicant breached the representations and warranties under clause 4(a) of the

Contract dates 09.07.2018 amounts to pre-existing dispute.”

5. The Adjudicating Authority accordingly rejected the Application.
6. Before us, it is argued by the Appellant that the Application was wrongly rejected. It is claimed that the defense taken by the Respondent was frivolous, spurious and unsubstantiated with regard to alleged pre-existing dispute. It is claimed that there had been no misuse of the brand keywords of the Respondent by the Appellant. According to the Appellant, brand keywords was part of job assignment and was always required to be changed, which the Respondent was communicating contemporaneously and Appellant was duly changing within the course of 24 hours. According to the Appellant, this could not be claimed to be pre-existing dispute. Reference is made by the learned Counsel for the Appellant to e-mail (Annexure 6 – Page 139) dated 13<sup>th</sup> December, 2018 sent by the ‘Corporate Debtor’ to the ‘Operational Creditor’ asking the Appellant to slowly start scaling up the campaigns. According to the learned Counsel this suggested that there was satisfaction with the services.

Against this, the learned Counsel for the Respondent has argued that in view of the information received by the Respondent, on 15<sup>th</sup> December, 2018, the Respondent had sent an e-mail to ‘pause all campaigns’ in all geos immediately and sought discussion. Reference is made to Annexure-5 (Page 138).

7. The learned Counsel for the Appellant has then referred to the Report of Deloitte dated March 2019 to submit that in that Report, e-mails were found on ‘Laptop’ of Mr. Uppal (An employee of the ‘Corporate Debtor’),

whereunder it was recorded that the Appellant “appeared” to have used brand keywords. It is also claimed that there was no manipulation of geo-location data of users from non-core States to core States to inflate the invoices. According to the Appellant, the earlier invoices had been paid without protest. Leads were generated by the Appellant and provided to the Respondent on regular basis, in the form of ‘Return on Investment’. It is also argued that Report of Deloittee is relying only on oral assertions made by representatives of Respondent regarding occurrence of geo-location captured by the Respondent. It is argued that the Appellant cannot manipulate the UTM parameters. It is further argued that gift hampers were distributed in the form of ‘Diwali sweets’ to the employees of the Respondent including Mr. Uppal and that alleged bribing of Mr. Uppal has no connection to the payment of the invoice dated 28<sup>th</sup> December, 2018. The Appellant claims that the Appellant had sufficiently explained the allegations made by the Respondent and, thus, the grievance made by the Respondent should not be treated as pre-existing dispute.

8. Against this, the Counsel for the Respondent is relying on the Investigation got done and Report of Deloittee as well as Notice dated 23<sup>rd</sup> March, 2019 (Annexure 10 – Page 187), which admittedly was sent by the Respondent on 5<sup>th</sup> April, 2019.

9. Having heard learned Counsel for both sides and having gone through the correspondence between the parties, it would be appropriate to reproduce portion of relevant para of Notice, Annexure-10 dated 23<sup>rd</sup> March, 2019 sent by the ‘Corporate Debtor’ to the Appellant – ‘Operational Creditor’. The Notice

was sent in the context of the same contract dated 9<sup>th</sup> July, 2018 (Annexure

2). The Notice states: -

“23<sup>rd</sup> March, 2019

To,

Living Consumer Products Private limited (LCPPL)  
3602 Wing A  
Rustomjee Elanza Off Link Road  
Near Inorbit Mall, Malad (West)  
Mumbai 400064

Email: [amit.vora@icrushiflush.com](mailto:amit.vora@icrushiflush.com)

Kind Attn: Amit Vora

Subject: Notice in relation to the Advertising  
Agreement dated 9<sup>th</sup> July 2018

Sir,

1. We have been instructed by our client, Play Games24x7 Private Limited (Play Games), to write a notice to you in relation to the agreements between Play Games and LCPPL for advertising services (Services) rendered by LCPPL to Play Games, including the Advertising Agreement (Agreement) dated 9<sup>th</sup> July, 2018.
2. Play Games has, as a part of an internal investigation gathered some credible evidence which indicates that either the Chief Marketing Officer of Play Games, Mr. Sachin Uppal, or his immediate kin has received a payment of INR 6,04,346 from LCPPL in October 2017. It has also come to the attention of Play Games that in October 2016, Amit Vora, CEO of LCPPL, has given Sachin a gift hamper as consideration for assisting Amit in his business with Play Games. Prima facie, this appears to be a violation of standard business practices, ethics and Play Games' anti-corruption policies.
3. Please note that Play Games is undertaking a comprehensive internal review and investigation into the relationship between Sachin Uppal, Amit Vora and LCPPL and the Services provided to Play Games, including regarding any improper

business practices, misrepresentations, misreporting and overstatement of fees that may have taken place on the part of LCPPL and Sachin.

4. We direct your attention to Clause 4(a) of the Agreement, under which LCPPL has represented and warranted that it will work diligently to protect and promote Play Games' interests at all times. Given this, we hereby request LCPPL's cooperation with Play Games in understanding the circumstances in relation to these transactions and providing information regarding any other commercial transaction between LCPPL and Sachin Uppal, including the purpose and intent behind such transactions. Please note that Sachin Uppal's relationship with LCPPL and Amit Vora is also being looked into as part of the internal review and investigation mentioned above. To aid Play Games in his process, we hereby request you to provide Play Games (at the address given below) with a clear statement explaining:
  - (a) the reason for the payment of INR 6,04,346 from LCPPL to Sachin Uppal/ his kin in October 2017;
  - (b) the reason for Amit Vora providing the gift hamper to Sachin Uppal in October 2016; and
  - (c) information regarding all other commercial transactions and understandings of LCPPL and Amit Vora with Sachin Uppal, including the considerations for the same and an explanation as to how such commercial arrangements are not in conflict with the interest of Play Games.
5. We have been instructed to inform you that pending the investigation and review, Play Games has currently suspended the Agreement, Services and all outstanding payments to LCPPL under the Agreement.
6. This is without prejudice to the remedies available to Play Games under law, contract and otherwise, and Play Games reserves all its rights and remedies in relation to the subject matter of the letter.

Yours sincerely

Sd/-  
Nikhil Narendran  
Partner  
Trilegal

CC: Play Games24x7 Private Limited  
401, 4<sup>th</sup> FLOOR, Building No.16  
Wing-B Interface Complex, Off Link road  
Malad (West), Mumbai  
Maharashtra – 400067.”

10. The learned Counsel for the Appellant claims that such Notice was sent so as to avoid proceedings like the present one and the Appellant has sufficiently explained and thus the Notice should have been ignored. Having gone through the Notice as mentioned above and considering the fact that the ‘Corporate Debtor’ had not rushed into issuing such Notice and had obtained Report from Deloittee in March 2019 (Page 33 of Diary No.17291), we find that the Notice does disclose pre-existing dispute between the parties with regard to the services rendered by the Appellant. Notice shows loss of confidence & thus holding on to outstanding payments. It is not possible in a summary proceeding like the present one for the Adjudicating Authority or this Tribunal to analyze the e-mails exchanged earlier in depth to ignore Notice like the present one, which was not simply rushed through. In proceedings of Section 9 of IBC, such Notice which is prior in time to the Notice sent under Section 8 of IBC, does show that there was pre-existing dispute regarding services rendered. In fact, before Notice under Section 8 was sent on 5<sup>th</sup> April, 2019, the Appellant had also sent a reply to this Notice (Annexure 10 – page 187) by reply (Annexure 11 – Page 189) raising denials



& explanation. Thus, considering the record, it cannot be stated to be a dispute raised merely for the purpose of dispute. We agree with the Adjudicating Authority, which rightly rejected the Application under Section 9 of IBC. We find no reason to interfere.

11. The Appeal is dismissed. No orders as to costs.

[Justice A.I.S. Cheema]  
Member (Judicial)

[Justice Anant Bijay Singh]  
Member (Judicial)

(Kanthi Narahari)  
Member(Technical)

**NEW DELHI**

2<sup>nd</sup> March, 2020

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